

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THIOMAS BADERA,

Plaintiff,

- against -

**ANSWER and
COUNTERCLAIM**

07 CIV. 9721 (SCR)

ERIC DEABREU,

Defendant.

-----X

The Defendant, ERIC DEABREU, answering the Complaint of the plaintiff herein and counterclaiming against the plaintiff herein, respectfully states to this Court and alleges upon information and belief:

AS and FOR AN ANSWER TO JURISDICTION and VENUE

FIRST. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraph 1.

SECOND. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraph 2, except admits ERIC DEABREU is a resident of Staten Island, New York

THIRD. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraph 3.

AS and FOR AN ANSWER TO FIRST CLAIM

FOURTH. With reference to Paragraphs 1 through 9 of the Complaint, the answering Defendant, ERIC DEABREU, repeats, reiterates and re-alleges each and every admission and denial heretofore interposed herein to Paragraphs 1, 2 3 and 4, inclusive, with the same force and effect as though more fully set forth herein at length.

FIFTH. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraphs 4, 5, 6, 7, 8, and 9.

AS and FOR AN ANSWER TO SECOND CLAIM

SIXTH. With reference to Paragraphs 1,2,3,4,5,6, 7, 8 and 9 of the Complaint, the answering Defendant, ERIC DEABREU, repeats, reiterates and re-alleges each and every admission and denial heretofore interposed herein to Paragraphs 1, 2 3, 4,5, 6, 7, 8 and 9 inclusive, with the same force and effect as though more fully set forth herein at length.

SEVENTH. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraphs 9, 10, 11 and 12.

AS and FOR AN ANSWER TO THIRD CLAIM

EIGHTH. With reference to Paragraphs 1 through 12 of the Complaint, the answering Defendant, ERIC DEABREU, repeats, reiterates and re-alleges each and every admission and denial heretofore interposed herein to Paragraphs 1, 2 3, 4, 5, 6, 7, 8, 9, 10,

11 and 12 inclusive, with the same force and effect as though more fully set forth herein at length.

NINTH. Denies knowledge or information sufficient to form a belief as to each and every allegation in the Complaint designated as Paragraphs 13, 14, 15, and 16.

AS and FOR AN ANSWER TO FOURTH CLAIM

TENTH. With reference to Paragraphs 1 through 16 of the Complaint, the answering Defendant, ERIC DEABREU, repeats, reiterates and re-alleges each and every admission and denial heretofore interposed herein to Paragraphs 1, 2 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 inclusive, with the same force and effect as though more fully set forth herein at length.

ELEVENTH. Denies each and every allegation in the Complaint designated as Paragraphs 17, 18, 19, and 20.

AS and FOR AN ANSWER TO FIFTH CLAIM

TWELFTH. With reference to Paragraphs 1 through 20 of the Complaint, the answering Defendant, ERIC DEABREU, repeats, reiterates and re-alleges each and every admission and denial heretofore interposed herein to Paragraphs 1, 2 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 inclusive, with the same force and effect as though more fully set forth herein at length.

NINETEENTH. By reason of the negligence of the plaintiff and as a result thereof, ERIC DEABREU sustained serious and severe injuries to his upper arm and shoulder. He was made sick, sore, lame, bruised, disabled and otherwise injured, internally and externally, and continues to be such.

TWENTIETH. By reason of the foregoing, ERIC DEABREU has been damaged in an amount greater than seventy-five thousand dollars (\$75,000.00).

SECOND CAUSE OF ACTION

TWENTYFIRST. Defendant repeats and realleges each and every allegation contained in paragraphs FOURTEENTH through TWENTIETH.

TWENTYSECOND. By reason of the negligence of the plaintiff, and as a result thereof, ERIC DEABREU was compelled to expend sums of money for medical care and treatment in effecting the cure of defendant's injuries.

TWENTYTHIRD. By reason of the foregoing, defendant has been damaged.

WHEREFORE, the Defendant, ERIC DEABREU, respectfully requests of this Court;

1. Judgment dismissing the Complaint with costs, disbursements and expense of this action.
2. Judgment in favor of defendant with respect to the Counterclaims herein.

THIRTEENTH. Denies each and every allegation in the Complaint designated as Paragraphs 21, 22, 23, and 24.

AS and FOR DEFENDANT'S COUNTERCLAIMS

FIRST CAUSE OF ACTION

FOURTEENTH. Defendant, ERIC DEABREU was legally operating his motor vehicle in the City of White Plains, County of Westchester and State of New York when the plaintiff, with malice and aforethought and absent provocation, stabbed the defendant, ERIC DEABREU in the upper arm causing bleeding, pain and permanent injury requiring treatment at the Emergency Room of White Plains Hospital and requiring approximately eighteen stitches as part of that treatment.

FIFTEENTH. At all times the defendant, ERIC DEABREU was operating his motor vehicle legally within the State of New York.

SIXTEENTH. At all times and locations referred to herein, Westchester Avenue was a public street in the City of White Plains, County of Westchester and State of New York and in regular use by the residents of the City, County, State and others.

SEVENTEENTH. On or about June 9, 2007 at approximately 6:30 P.M ERIC DEABREU was assaulted and injured due to the negligence of the plaintiff, THOMAS BADERA, as follows:

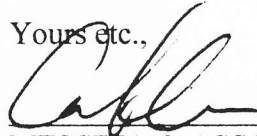
THOMAS BADERA, without cause or provocation and absent legal justification, assaulted and injured the defendant ERIC DEABREU by stabbing him with a knife about his upper arm and shoulder area.

EIGHTEENTH. The injuries sustained by ERIC DEABREU were due wholly and solely to the negligence of the plaintiff, THOMAS BADERA.

3. Denial of plaintiff's request for statutory damages and attorney's fees and costs.
4. What further relief this Court may deem just and proper.

DATED: White Plains, New York
November 26, 2007

Yours etc.,



MESSINA & ASSOCIATES, P.C.

By: Anthony John Messina, Esq. (2354)

Attorney for Defendant

81 Main Street – Suite 118

White Plains, New York 10601

Telephone: (914) 949-9440

TO: William Greenburg, Esq.
GREENBURG & MASSARELLI, LLP
2929 Purchase Street
Purchase, New York 10577

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss.:

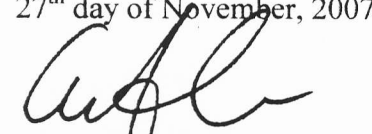
ERIC DEABREU, being duly sworn, states that:

I am the Defendant in this action and that the foregoing Answer and Countclaim is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

DATED: White Plains, New York
November 27, 2007


ERIC DEABREU

Subscribed and sworn this
27th day of November, 2007



Notary Public

ANTHONY J. MESSINA
Notary Public, State of New York
No. 499/584
Qualified in Westchester County
Commission Expires June 21, 2010

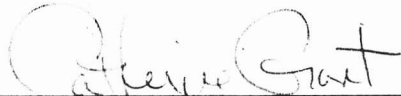
AFFIDAVIT OF SERVICE

CATHERINE GRANT, being duly sworn, states as follows:

I am over 18 years of age, not a party to the within action, and reside at Brewster, New York.

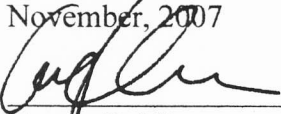
On November 27, 2007, in the afternoon, I served one (1) copy of Respondent-Tenant's ANSWER and COUNTERCLAIM, concerning the above captioned case, by depositing a copy of same in a sealed envelope with postage pre-paid thereon, in an official depository of the United States Postal Service within New York State, addressed to:

GREENBURG & MASSARELLI, LLP
2929 Purchase Street
Purchase, New York 10577
Attention: William Greenburg, Esq.



Catherine Grant

Sworn to this 27th day of
November, 2007



Notary Public

ANTHONY J. MESSINA
Notary Public, State of New York
No. 4997564
Qualified in Westchester County
Commission Expires June 8, 2010